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[of] Paschal vs. Evans

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ANSWER TO INTERROGATORIES

IN CASE NO. 396,

MARY C. PASCHAL ET AL.,

vs.

THEODORE EVANS,

DISTRICT COURT OF McCULLOCH COUNTY, TEXAS.

NOVEMBER TERM, 1893.

BY JOHN O. MEUSEBACH.

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ANSWER TO INTERROGATORIES.

INTERROGATORY No. 1:—What is your name, age, residence and nativity; and if you state that you now live in Mason county, Texas, then state how long you have lived there and how long have you been in Texas?

ANSWER TO INTERROGATORY No. 1:—My name is John O. Meusebach, as naturalized in Texas in 1845. Became a citizen of the United States by annexation. My age is 81½ years; residence Loyal Valley, Mason county, Texas. Nativity, kingdom of Prussia. Lived in Loyal Valley since 1869, and in Texas since 1845. Since 1869 I have been ruined three times by elementary forces, by water, tornado, and fire; three times by accidents, by breaking left foot, right arm, and by rupture, and a periodical swelling of feet makes it impossible for me to leave my house or room since about two years. I mention these personalities in order to explain why I cannot hunt up testimony or documents outside of my house, nor trust to my memory with absolute certainty as to facts and events which happened nearly half a century ago. Still I base my answer to interrogatories mostly on such printed or other documents, which I consider official, so far as I could get hold of them. If incomplete, the fault must be ascribed to circumstances, if incorrect, the authors are responsible.

INTERROGATORY No. 2:—Do you know anything about the German Emigration Company? If yea, state all you know about its origin, its existence, and its connections with Fisher's and Miller's Colony.

Give history of it, with dates, as near as you can, and give the different names by which said company was known.

ANSWER TO INTERROGATORY NO. 2:—I know something about the German Emigration Company.

ITS ORIGIN

In 1842, a company, at first small in members and means, excited by the glorious achievements of the young Republic of Texas, and the glowing descriptions of its beautiful climate, fertile lands, and other resources, had been organized in Germany and had sent two of its members to Texas, in order to ascertain the truth and to report whether the country was a favorable field of operation for emigration on a large scale, or for financial speculation in lands on a small scale only.

The reports from Texas being favorable, and an additional number of shareholders with ample means having been secured, it was concluded at a general meeting to drop the idea of financial speculation and to organize as an association with the avowed purpose of aiding and leading the emigration to Texas on a large scale, and to carry the operations on a basis of philanthropical principles, excluding all political or money-making financial projects.

(See notice signed officially by Count Castell, leading director of the company, dated May 11, 1845, and printed in "the German settlements of Texas."—Bonn, 1845, page 4.)

Under the name of "The Association for the Protection of German Emigrants to Texas;"

Subsequently known as "The German Emigration Company;"

This company being mostly composed of princes and noblemen, was definitely organized and chartered

in the Dukedom of Nassau, May 3, 1844.—(See White, page 3.)

The company—its members being neither business men nor financiers—fell an easy prey into the hands of shrewd land speculators. At first, a speculative Frenchman, Bourgeois d'Orvanne, having heard of the intentions of the company, and being in possession of a so-called grant-concession in Western Texas, offered it for sale. Head over heels his offer was accepted, notwithstanding that his contract showed on its face that it was already forfeited, but probably under the condition that an extension of time could be obtained from Congress of Texas.

In April, 1844, Prince Solms was appointed trustee and general agent, and Bourgeois d'Orvanne as colonial director, and both started in May for Texas, for the purpose of making the necessary arrangements for the reception of the emigrants to be shipped in the fall of 1844, and for the transportation and settlement of the same on their lands. (See page 27 Coll. Doc., 1845, and White's brief, p. 4.)

Failing to get from Congress an extension of time for d'Orvanne's grant, the Prince wrote in a private letter to the director in Europe "that they were now in the disagreeable situation of having emigrants coming and no lands to grant to them." If he had added that land could be bought at the rate of from 5 cents to 10 cents per acre at that time, without onerous conditions attached to it, he would perhaps have kept the directors from another hasty beginning. Because just at this time Henry Francis Fisher, from Texas, a part owner of the so-called Fisher and Miller grant or Colonization Contract, made with Pres. Sam Houston, September 1, 1843, arrived in Germany and offered his contract for sale. Head over heels the offer was accepted and an agreement signed June 24, 1844, by which Fisher and Miller transferred and conveyed to the German Emigration Company their

rights in the Colonization Contract which they held with the Republic of Texas. The Company undertook to supply the emigrants contracted for, and to fulfill the other conditions of the grant concession. (White's brief, p. 4.)

With the buying of that grant the doom of the company was sealed. They did not know what they bought. They undertook to fulfill what was impossible to fulfill. They did not have the means nor the time to fulfill it. Neither of the contracting parties nor their agents had ever seen a particle of the land in question. The territory set aside for settlement was more than three hundred miles from the coast more, than one hundred and fifty miles outside of all settlements, and in the undisturbed possession of hostile Indians. The government had promised no aid to take it out of the hands of the Indians. It had to be conquered by force or by treaty. With the money paid to Fisher & Miller, which after all was not much over \$9000, the Company could have bought 180,000 acres (more or less) of good titled lands or headrights without onerous conditions attached to them, and could have located their colonies within or right near to the settlements without over-hastening their operations. I used twice the expression "head over heels," because a simple study of the wording of the colonization contract, of the laws of Texas, and of the land market in Texas at that time, would have warned the Company to keep their hands off from contracting blindly for onerous colonization contracts of *other parties*.

The time allowed for the importation of one-third of the families intended to be introduced, DIRECTLY FROM EUROPE, was only eighteen months, and nine months twenty-one days had already elapsed when the contract was made with Fisher & Miller.

It is true that by a joint resolution of the Legis-

lature of Texas, dated January 29, 1845, the time for the introduction of one-third of the emigrants was extended till the first of March, 1846, but this act of liberality on the part of the Legislature—subsequently passed—does not excuse the light-minded action in closing the contract with Fisher seven months before the passage of the liberal act.

In place of ordering their own agent (Prince Solms) then residing in Texas, to examine personally the territory in question and to report, the leading director in Europe relied exclusively, and with a credulity hardly to be conceived, on the statements of the vendor, who had an interest to sell as quick as possible, and therefore to make it plausible that with 200,000 florins, at 40c., the whole colonization of 6000 families and all the promises to the emigrants, based on erroneous calculations, could be carried out.

To carry out such a contract to the letter, with the promises held out to the emigrants, would have required half a million of dollars, and not a pittance of 200,000 fl., at 40c., equal to \$80,000.—The Company was under the impression that they bought land (and no doubt arable land).

“NOTICE.—That Bourgeois d’Orvanne’s contract has been declared forfeited by Congress of Texas, and that the Company has made another contract with H. Fisher, by which the more northerly situated *extraordinarily fertile*(?) and healthy lands on right side of the Colorado River have been *acquired* and got in *possession* of the Company.

“THE DIRECTORY.

“11th December, 1844.” (Coll. Doc., p. 81.)

“Of the *lands* which the Company has *acquired* for their German emigrants, it is to be mentioned that they heretofore *belonged* to Fisher, from whom the Company *has bought* them. It is an area of

3,878,000 acres, of which 640,000 acres are in one connected body." (Hdbk., 1846, p. 80.

That is to say: that by a subsequent act of the Legislature, dated January 29, 1845 (Paschal's Dig., p. 278), the contractors were allowed to settle some of the alternate sections with emigrants for defence against the Indians, not to exceed one-twelfth part of all the alternates, and under the condition to set aside a like amount of land for the government, and have it surveyed at their own expense.

Fisher & Miller had no lands to sell at all; but only their rights in the Colonization Contract which they had with the Republic of Texas.

The colonization contract did not donate a particle of land to the contractor without onerous conditions. It did only set aside a *territory* which was in actual possession of hostile Indians, with the right to introduce, within eighteen months (afterwards till 1st of March, 1846), one-third of the families to be introduced from Europe, not to exceed 6000 families, and to settle them on these lands, and select for them suitable locations. And after these emigrants had been living on their lands for three successive years, had built a house on it, had fenced and cultivated fifteen acres, (afterwards by subsequent liberal legislation, if they had only cultivated a part of it,) it promised to donate and make title to each family for 640 acres, to each single man 320 acres. To the contractor the government allowed ten sections of 640 acres for each full 100 families, and ten half sections of 320 acres for each full 100 single men, actually settled within that territory in the hands of hostile Indians. On the 23d of August, 1851, Fisher & Miller appeared before Granville H. Sherwood, Commissioner of the Colony, and proved under oath that the German Emigration Company had introduced and settled 1600 families and 1000 single men, and that therefore headrights for 160 sections of 640 acres

and 100 half sections of 320 acres had to be made out as premium sections which they claimed, under a pretended judgment, to be made out in their names. Commissioner Sherwood did so, but the Commissioner of the General Land Office refused to acknowledge the legality.

When the petition of Fisher & Miller, to legalize these certificates, came up in the House of Representatives, in the spring of 1852, the Hon. Sam Maverick, of Bexar, got up with a fulminant speech, which—thundering that you could hear it in both houses—he concluded with the following words:

“They say (Fisher & Miller) that they got a judgment; it is a snap judgment; gotten up in a dark corner; it is a fraud, a fraud, a fraud!”

The House did reject the petition.—At that time the German Emigration Company had yet some agents or trustees; whether they have instituted suit to annul these certificates I do not know. But in 1856, when the Company had been dissolved or disorganized for years, and was not defended any more, Fisher & Miller succeeded in carrying act of February 1st, 1856. (Paschal's Dig., p. 252.)

The grant concession forced the contractor to reserve, set aside, and have surveyed alternate sections for the Republic of Texas (premium and school lands excepted). It allowed to make contract with each emigrant for transfer of not more than one-half of his land to the contractor. The emigrant could only make title after he had acquired title.

Under the impression that they owned land, the Company promised to donate to each family 320 acres, and to each single man 160 acres. It could just as well have been said that each emigrant donated land to the Company. But neither of them did so; the donor was the Republic of Texas.

Most of the bombastic pamphlets, advertisements, plans, statutes, programs, and regulations, of which

a great many, I suspect, were from the pen of the Colonial Director, Bourgeois d'Orvanne, a Frenchman,—were made for circumstances, which for Fisher & Miller's grant in reality did not exist. That was the first result of the over hastened acquirement of a contract which they had either not read, or not understood, the bearings and consequences of which were fully overlooked. I take from White's brief, page 4, the correct statement of the further proceedings of the Company's agent in Texas:

"Prince Solms came to Texas in advance for the purpose of making the necessary arrangements for the reception of the emigrants and their transportation to, and settlement (after annulment of d'Orvanne's grant) now upon the land granted to Fisher & Miller. Arrived here he found that the lands were in a wild and unsettled region, infested with dangerous tribes of hostile savages, and far removed from access to the actual necessities of life. Under these circumstances, in order to effect the objects of the Company, and at the same time as a matter of justice to, convenience for, and comfort and protection of the colonists, he found it necessary to establish towns and depots at suitable distances from the point of their disembarkation at the coast, up to the interior of the country. With this view he selected as his first town Carlshaven, on Matagorda bay, now known as the city of Indianola. The second depot was established at the junction of Comal creek with the Guadalupe river, now known as the city of New Braunfels."

(The third and last depot was selected, located, surveyed and settled with emigrants by his successor in office, it being the town of Fredericksburg, Gillespie county.)

White's brief, page 6: "The first ship of the

Company, 'Johann Dethard,' landed at Galveston the 23d day of November, 1844. On their arrival in Texas these emigrants were informed that owing to the reasons above enumerated, the Company were unable to convey them to, and put them into immediate possession of the land promised, and in consideration of this failure of the Company to forward them on to the grant, the Company would give to each of the colonists a lot or homestead in one or other of the towns or depots established by them. A few days after the purchase of the Comal tract (March 14, 1845) the emigrants arrived there and went into camp. The Prince immediately went to work with his engineers to lay off the town into convenient building and farming lots. After this was done and the maps and plots were prepared, the lots were distributed to the emigrants."

On the 24th of February, 1845, I was appointed as successor of Prince Solms, and as trustee and general agent of the German Emigration Company in Texas. In April, 1845, I believe, I landed at Galveston. I was advised by the directory of the Company in Europe, to have the balance credit of Prince Solms,—if any was left with the banker,—transferred to me. In place of a balance credit, I found only debts. Financially I found the affairs of the Company in the greatest confusion and disorder. The prince had already experienced that all the estimates made by the directory in Europe, with the aid of Fisher (the vendor of the grant concession) were by far underrated, no matter whether intentionally or unintentionally; that the shipping of frame houses, goods, provisions, and emigrants with unlimited baggage from Galveston to Matagorda bay; that the camping, moving, transporting, and supplying such a large body with provisions, required more than 10 times the amount of the estimates. After he had carried his emigrants up from the coast in good or-

der, and settled them on a preliminary homestead he thought his mission ended, and would under no circumstances remain in Texas. He did not pretend to be a financier, but I guess he foresaw the storm coming.

In traveling up from the coast (Carlshaven) I was bothered nearly every step of the way by the presentation of claims against the Company. Arrived at New Braunfels I ordered the treasurer to make up a complete statement of all assets, credits, and debits of the Company in Texas. Was told that that was impossible. The Prince, the treasurer, the doctor, the engineer had written, drawn or made out due bills, drafts or notes, without having them booked by the treasurer. In order to get some reliable information in reference to the financial standing and operations of the Company in Texas, I concluded to follow the Prince to Galveston, to which place he had started a few days before my arrival at New Braunfels. Found him there with an attachment brought out by some uneasy creditor of the Company. Lifted the attachment by paying the claim out of my credit under the condition that he would urge the directory in Europe to send immediately, and without waiting for report, a credit twice as large as I had along, because the items picked up by me on the road in traveling, showed already an indebtedness to that amount. I told him that the welfare of the emigrants depended for the present on the means of the Company who had promised to supply them in provisions until they could raise a crop, and to furnish them with everything necessary to make a crop either for pay or on a credit.

I have no doubt but that the Prince did notify the directory in Europe according to promise. But they had at that time probably no more available means on hand. It is a remarkable fact that of the thousand critics who undertook to criticise the doings of

the Company and of myself, none has found out that the Company—with the utmost naivete and an admirable frankness—published a statement (Coll. Doc. pp. 67-74) in the spring of 1845, in which they proved that they were already bankrupt at that time, that is to say, that all available funds were exhausted by the first shipment of 700 emigrants in the fall of 1844. (It is true that on paper they showed a remnant of 50,000 florins equal to \$20,000, but the debts left by the administration of the Prince did overrun that amount as I proved by a complete statement made by myself and sent to Europe in August, 1845.) To show what their ideas were I let them speak for themselves.

Coll. Doc. p. 67: "The sum of 200,000 florins (\$80,000) is more than sufficient to defray the expenses of the first expedition (the 700 shipped in 1844) and to care for their settlement till they can exist by their own exertions."

For the future all expenses will be covered by the deposits of the emigrants.

"Of the deposit of a single emigrant at 300 fl., the Company receives 150 fl. There remains therefore for him a credit of 150 fl." (Coll. Doc. pp. 74, 75, 76.)

But even that calculation was an error; because among the items charged to the emigrants in their accounts and considered as above stated, to go to the pocket of the Company, there were:

1. The delivery of a house in the colony on the emigrant's land for \$24, and
2. The transportation from the landing place at Galveston by sea to Matagorda bay, by land to the colony, shipment 1844 for \$4 per person, 1845 for \$8, 1846 for \$11.20.

A house could not be delivered for less than \$100. The transportation to colony for not less than \$20 to \$30. The houses had to be built in Texas, not in

Germany. The expenses for transportation were to be made in Texas. The money for both items should have been at disposal in Texas, before the arrival of emigrants.

Having failed to get from the Prince in Galveston, any reliable information in regard to the financial operations of the Company and their debts, and having been referred again to the treasurer at New Braunfels, who had declared that he could not make a full statement, I had to go to work at it myself. I restored order in the financial department, and by close management inspired the creditors with confidence, and would have kept both order and confidence, but for some new stupendous blunders on the part of the directory in Europe in the shipment of the emigrants in the fall of 1845. In August, 1845, I had sent a complete statement of all amounts, credits and debits of the Company in Texas, showing that a debt of \$19,460.02 was left by my predecessor in office; contracted for the transportation, settlement, and entertainment of the emigrants of 1844, since their disembarkation at Galveston in the fall of 1844 till August, 1845, besides using up my own credit of \$10,000 for the same purpose. Till to arrival of the new emigrants 1st of November, 1845, the debt for entertainment of the old ones did overrun \$24,000, I requested the directory in Europe to send immediately this amount as a separate fund, irrespective of the amounts necessary for the reception of new emigrants to be shipped in the fall of 1845, and for further operations. At my departure from Europe in February, 1845, I had been informed that the Company *intended* to make a large shipment of emigrants in the fall. But till end of August, and later, I had not been notified that they *did* ship any, and how many. Still I thought it advisable to make preparations for a preliminary settlement as soon as I got my hands free from other more urgent business, and

knowing that the distance from New Braunfels to the colony was 150 miles or more, this time entirely outside of all settlements, and in the Indian country, and that for the safety of the colonists, it was absolutely necessary to make another depot on the nearest road to the colony, I started out on a preliminary reconnaissance. The only available point was found on the waters of the Pedernales river, 70 to 75 miles northwest from New Braunfels, it being about half the distance to the limits of the grant. Returning from reconnaissance, and the treasury being empty as customary, I bought 10,000 acres of headrights on a credit, raised and equipped a surveying party, selected, located, and surveyed a connected body of arable land, well watered and timbered on tributaries of Pedernales river, and had a wagon road made from New Braunfels directly to the future settlement. The whole tract was afterwards laid out in town lots and 10 acres lots, to be divided out gratuitously among the emigrants of 1845 and 1846 as preliminary homesteads, and is now known as the town of Fredericksburg, Gillespie county.

When I came back to New Braunfels, I believe it was end of October or 1st of November, 1845, I found there the first letters from the leading director of the Company, notifying me that they had shipped 4000 emigrants, and that they had opened to me two new credits with banker at New Orleans of \$6000 and \$18,000, or \$24,000 in all. Not a word that they had sent also their debts (part of deposits of emigrants) in checks or orders drawn on the empty colonial treasury.

The Company introduced

1844, 700 emigrants according to p. 79 Tex. handbook, 1846.

1845, 4304 emigrants, according to ship list in hand.

1846, 2376 emigrants, according to ship list in hand.

Total, 7380,
without counting those not directly imported from Europe—several hundreds in number.

They promised “goods and provisions must be delivered to the emigrants till to next, and next following crops.” (Coll. Doc. page 33, Handbook, pages 85, 91.)

It follows: 1. That an army of 5000 emigrants (of 1844 and 1845) had to be kept in goods and provisions at the arrival of the expedition of 1845, in October, November, December, 1845, and further on, which at the lowest possible estimate of ten cents per day and person, required a daily expense of \$500 for these two items only, makes an aggregate amount of \$45,000 for three months or 90 days, which sum should have been here before or at arrival of the emigrants. The leading director in Europe could not possibly be under the illusion that from the trifling credit of \$24,000 (opened in 1845) the daily expense of \$500, and more could be paid, when he knew at the same time, by report of the Prince and of myself, that debts existed here using up the credits opened at their arrival. He could not plead ignorance of the fact or default of reports, as excuse, because he only knew before hand how many emigrants were shipped, and could make calculation of the probable daily expense.

2. The emigrants paid in Europe to the Company:

For Transportation.	For Deposit.
1844, 2850 fl. at 40 cents.....	17,073 fl. 19x.
1845, 82,904 fl. at 40 cents....	130,336 fl. 5x.
1846 15,052 at 40 cents.....	

The Company therefore had 82,904 florins at 40 cents, equal to \$33,161.60 in their pocket for trans-

portation of emigrants of 1845, from place of disembarkation at Galveston, till to the colony. This amount was certainly a good deal less than actual cost; the transportation and expense for it had to be done and made in Texas, and not in Europe. The money should have been here before or at the arrival of the emigrants in October (and following months) —\$33,161.60. The manager or leading director in Europe could not be under the illusion that the trifling credit of \$24,000 used up in paying the old debts, could be used a second time to pay for transportation. In a letter addressed to me, dated March 24, 1846, he acknowledges the fault, trying to lay the blame on other shoulders:

“The leading committee did make the fault to send the emigrants and not the money for transportation.”

3. As I have stated before, the Company charged to each single emigrant, or family, for a house if they wanted it, \$24; said house to be built on their lands in the colony. It could not be built for less than \$100. Suppose there were only 500 houses, or even less, charged for the 4000 emigrants, it would have needed \$12,000, amount to be expended here at or before arrival of the emigrants, and not to be kept in the pockets of the Company.

4. “Of the deposits of a single emigrant, at 300 fl., the Company receives 150 fl.; it remains, therefore, for him a credit of 150 fl.” (Coll. Doc., 74, 75, 76.) These credits, or remaining deposits, of the emigrants of 1845 amounted to 130,336 fl., 5x at 40 cts., equal to \$52,134.40, as I have stated before. Half of it was counted to go to the Company's pocket, the other half was sent as checks or orders drawn on the empty treasury in Texas, without giving me notice beforehand; without sending a list of the checks or orders drawn; without having first made a deposit here in Texas for that amount. To pay these orders it

would have needed a deposit of \$26,067, more or less, before the arrival of the emigrants in the fall of 1845. But the most astonishing fact is that not even the leading director of the Company knew the amount, or had a list of the deposits paid in, or the orders drawn. In a letter dated 23rd of June, 1846, he writes to me:

"That by fault of the banker he received a list of deposits of 1845, at first in February, 1846."

This fact shows that the control of his subordinates, by the leading director, was mighty deficient; that the business was carried on very loosely, without respect to business rules at all. (The banker had been instructed to collect at the shipping places, Bremen or Antwerp, the money to be deposited, and to make out a little account book for each emigrant, stating the amount yet due each colonist, with order to pay it here in Texas on demand.)

TO RECAPITULATE.

The poorest calculator could have foreseen, in Europe, that it needed in Texas, in the fall of 1845, at or before the arrival of the emigrants—

1. \$24,000 for the payment of the floating debt.
2. \$45,000 for goods and provisions, to entertain 5000 persons, or less, for three months only.
3. \$33,161 60-100 for land transportation of 4304 emigrants.
4. \$12,000 for houses to be built in colony.
5. \$26,067 to pay drafts or orders for deposits of emigrants. Total, \$140,228 60-100.

Of all the amounts needed at the arrival of the emigrants, only the trifling item for the payment of the old debt had arrived. Not one cent was left for the entertainment, the transportation, and settlement of the emigrants in 1845, and for returning deposits. Bankruptcy, predicted by me already in Europe, and proven from their own statement to the leading di-

rector by me, stared us now in the face, and it was in my own interest to let it have its way, and let it break out openly, because I had to claim a considerable indemnification in case the Company should fail. But considering that the emigrants had trusted to the promises of the Company, that their welfare was at stake, and that, perhaps, an unforeseen delay had happened in Europe, in not notifying me of new credits opened, I felt it my duty—and nothing more than my duty—to hold out, to keep the “de facto” insolvency secret, and not let it break out openly “de jure.” No outsider, nor any of the employes here, did know fully the desperate situation of the financial department. But any man of business can feel the embarrassment to be stopped by total want of means, at a time when quick and energetic action was unavoidably required. It is not an enviable situation to be forced into the position of that Roman General Fabius, nicknamed “Cunctator,” of whom an old verse tells us:

“Fabius cunctando restituit rem.”

(Fabius saved the Republic by delaying (action).)

The whole business had now to be carried on on a credit.

If the insolvency had been known, all credit would have disappeared at once.

I went to Galveston to see after the disembarcation and moving of the emigrants, who had to be divided into camps at Galveston and Indianola (Carlshaven). Those shipped to Indianola were to be moved upwards first, as soon as teams and provisions could be procured. If we had had only \$20,000 or \$30,000 (of the over \$100,000 due us), here at disposal, we could have bought and loaded a train of 100 wagons with emigrants, and another train of 100 wagons with provisions, started them to the colony, at that time yet in the hands of Indians, and unloaded them

amongst the Comanches, driving the Indians to other hunting grounds.

Report after report was sent to Europe to urge the immediate sending of sufficient funds for further operations. No answer and no funds appearing, I went to New Orleans to try whether the banker of the Company would advance some money. He declined, and, returning to Galveston (about the 11th or 12th of February, 1846), our agent Klaener stated to me, that he was at the end of his wits; that he had pawned his store and everything he had, but could do nothing more. I told him that our last remedy would be the public press in Germany; that I could not do it in my capacity as trustee of the Company, but that he might make a correct statement of the sufferings of the emigrants on account of the failure of the Company to come up to their promises. He did so, and that action had the desired effect. **Then, and not until then, extraordinary efforts were made to raise money on a larger scale.** A credit of \$60,000 was opened at once, and the notice was brought over to me by an extraordinary messenger, Mr. Cappel.

See letter of Count Castell, dated 10th of June 1846: "The letter of Mr. Klaener, addressed in the mayor of Bremen, Mr. Schmidt (published to the papers), has made the worst impression. It has been communicated to the governments who now call for an explanation. It states that sickness and death prevail in Indianola and New Braunfels, and that the Company does not come up to their promise to remove the emigrants upwards. We would have risked everything if we could not say we have acted immediately as soon as we heard how matters stood." (As if they had not heard of it by my reports?)

The letter of advice of the banker in Germany of this credit of sixty thousand dollars, was dated 14th July, 1846; the letter of advice of our New Orleans

banker, for the same credit, was dated 17th August, 1846, and arrived at New Braunfels on the 7th of September 1846. If the same amount had been sent one year before, in September, 1845, when the money was due or overdue, probably the most, if not all, of the inconveniences, troubles and misfortunes would have been avoided.

The floating debt, originally light as a snow flake, in comparison to the extensive and expensive business, had been swelling up to an avalanche; the daily expense for the entertainment of the emigrants in provisions and goods, as promised, till the first and second crops, had not materially diminished, because the number lost by sickness, death and dispersing, had been refilled by the emigrants arriving in 1846. That item alone had swelled again, during the year 1846, to \$100,000 at a rough estimate. But new, unbounded expenses, resulting from unbounded promises, had to be added to it.—I have anticipated events, and will have to return to Galveston, where I was, in February, in the greatest distress. The main thing was to keep the emigrants in provisions and to get provisions on a credit. Next, any team that could be directed to Indianola was engaged at any price.

But unhappily, at that time, winter of 1845 and spring of 1846, soldiers and, perhaps, equipments and provisions for the army of General Taylor were shipped to Lavaca, and moved from thence, by land, towards the Mexican frontier. The United States government could and did easily outbid our offers to the wagoners seeking freight at Lavaca and Indianola. Transportation was delayed for that reason, not a cent being at disposal to buy teams of our own. And that winter being extraordinarily wet at the coast, sickness broke out both at Lavaca and Indianola. The unacclimated emigrants suffered the most. 321 died at Indianola and on the road (children in-

cluded) according to the official list. Counted with those who died afterwards at New Braunfels and Fredericksburg, supposed from sickness contracted below, the total did not much overrun 800 or 850. In March I went up from Galveston to Houston, and succeeded in making a contract with Torrey Bros. for a train, or trains, to be started from Indianola to New Braunfels for transporting our emigrants to the latter place. The main point was that it should be paid with drafts on the Company in Europe, because we had no money here at disposal. I drew two drafts, one for \$6000 and one for \$10,000, in pay for transportation, until the contractors succumbed to the higher offers of the government agents at Lavaca. Whenever new emigrants arrived at New Braunfels they were dispatched, if possible, without delay to the new settlement Fredericksburg, which was then considered the healthiest place. In Houston H. F. Fisher introduced to me, under the name of Dr. Schubert, a man of good appearance, strongly recommending him as a very good doctor and an experienced colonisator. He had just come down with his outfit from Brushy or San Gabriel, where Fisher said that he had started a colony, but had to move on account of Indians. On the strength of the recommendations of Fisher, I engaged him as doctor and director of the new settlement (Fredericksburg), but he turned out afterwards to be a great humbug and adventurer, and I had to dismiss him from office before I resigned myself in 1847. In April, I believe, I went up to Nassau, a plantation in Fayette or Austin county, belonging to the German Emigration Company, hoping to find there time to make full reports to the Company and also to find teams in the well settled neighborhood to be engaged for the transportation of emigrants and provisions. I was followed, as in Galveston, Houston, New Braunfels, and everywhere, by creditors of the Company, principally by

the new emigrants, producing their little account books wherein orders were written for their deposits, unadvised, uncovered by bank deposits of the Company. In May I started out again, visiting settlements on the Brazos and Colorado rivers, in order to engage corn and teams in quantities and to direct these articles to New Braunfels. Returning to that place, I turned my whole attention to the new settlement, which should be the basis for further operations and advances towards the limits of the colony.

The trifling credits opened in intervals of months disappeared like drops in the ocean, and were hardly sufficient to keep the uppermost settlements in provisions and goods. The situation was better when the first large credit of \$60,000 arrived in September, 1846. Most just debts and deposits were paid, and once more order was restored in the financial department for a short time. I requested the district surveyor, John James, to have the colony surveyed as fast as possible, and he replied that none of the deputy surveyors would go there with his outfit, unless I made a treaty with the Comanche Indians, they being in actual possession of the territory.

Without my knowledge and authorization the so-called "Doctor Schubert" had raised a company in the latter months of 1846 at Fredericksburg, and with his men and a *cannon*, had started out to be the first one inside of the limits of the grant. He never dared to cross the Llano river, and cowardly returned without a shot fired, making now a report to me that it was impossible to get into the colony, because it was full of hostile Indians. That report could not be allowed to go abroad unrebuked. It would have created despondency amongst the emigrants and the Company. Therefore, shortly after Schubert's return, I started with 20 men and three wagons from Fredericksburg in January, 1847, crossed the Llano river at the mouth of Beaver creek, was met by the

Comanche Chief Ketemoczy, at the place where now stands the town of Mason, and held the first council with him where now the store of Mr. Doole is located, I believe. Ketemoczy promised to gather, within a few days, the head chiefs at the San Saba to hear my propositions for a treaty of peace, and showed us the nearest road to the river. When I had been in council for a number of days, with large bands of well-drilled and armed Comanches, and their chiefs, at the San Saba (at the place which is now known as the Camp Colorado crossing), Major Neighbors came on as the bearer of a dispatch from Governor Henderson, dissuading from entering the colony, as the Indians were reported to be on the war path; at the same time recommending the Major as an expert in treating with the Indians—if I would not return. The Major had been Indian agent for the Lipans under the Republic of Texas.

I engaged him for the remainder of the trip, dismissed most of my company with the wagons, keeping only about seven men, agreed with the Indians that at the next full moon the peace council with all the head chiefs of the western bands of Comanches should be held at the lower San Saba, and used the time remaining till full moon for an exploration of the lands on that fabulous San Saba river, Spanish Fort, Brady Creek, and surrounding places. At full moon we were at the agreed spot on the lower San Saba, about 25 miles above its mouth into Colorado river, made a treaty with the head chiefs Buffalo Hump, Santa Anna and Mopechucope, and their people, for all the western bands of Comanches, promised them \$3000 worth of presents, for which consideration they on their part promised and agreed not to disturb our surveyors in their work, nor to do any harm to our colonists. Dr. Roemer, the geologist, whom I had invited to stay with us as our guest at New Braunfels during his sojourn in Texas, came

along with Major Neighbors, when I was encamped with the Indians some days at the San Saba. I invited him to go along with me and my company on our further trip. He feels obliged, in his work "Texas," 1849, page 327, to mention that the speeches made at the council on San Saba were embellished. But he embellishes the situation in his book, "The Cretaceous Formation of Texas," 1852, page 88, speaking of "our joint expedition" to the San Saba as if he had had anything to do with my expedition, except to follow up from San Saba Camp as a very welcome guest on our further trip. On pages 259 to 262 of his book "Texas," he embellishes the doings of a riotous mob into proceedings with the citizens of New Braunfels; on pages 208, 217 and 188 he repeats the errors of my enemies and outsiders in reference to my stay at Nassau Plantation, and on page 203 he even goes so far as to judge of my motives, without asking me for them. The childish idea that I fled or absconded in fear of the excited emigrants, is simply ridiculous. I never fled before anything or any danger, that I can recollect. I had just as many excited emigrants at Nassau daily, as I had at Galveston, Houston, New Braunfels, or anywhere. I was always at those places where, in my judgment, my presence was most needed in the interest of the company and the emigrants. In a letter addressed to the treasurer at New Braunfels, written by me from Nassau, I communicated my plans to him in advance.

Colonel Jack Hays, the celebrated Indian fighter, when he returned from a trip to El Paso made in the interest of the San Antonio merchants to find the nearest overland road, in 1858 or '59, I believe, stopped at my house at Comanche Springs, and told me that he was astonished that the Indians kept their treaty so well. That he was never molested nor lost any animals during his travel within the limits of

our colony, but as soon as he had passed the line he had losses. After an absence of nearly three months within the colony and amongst the Indians, I returned to New Braunfels.

With my report of January 19th, 1847, I had already tendered my resignation irrevocably to the leading director in Europe, stating that as soon as I had shown the possibility of surveying and settling the colony, all the Indians notwithstanding, I would turn over my office to any one having authority to take it.

On the 20th of July, 1847, I turned the office over to Mr. H. Spiess, as my successor.

It is not pretended that the foregoing pages contain a history of the German Emigration Company. To write a history it needs more time, more study, more documents; they contain only a simple answer to the questions propounded by the court, given from memory and such documents as I could get hold of, to the best of my knowledge and belief. Some of it must naturally be guess work, but inasmuch as the basis are underrated estimates, and the actual expenses were unavoidably higher, it will not fall very short from the truth.

INTERROGATORY No. 3.—Do you know anything of an agreement made between the said German Emigration Company, under any of its names, or between the members thereof, or between the agents employed by the Company on one part, and the emigrants introduced into Texas by the Company under the contract with H. F. Fisher and Burchard Miller in relation to the quantity of land such emigrants were to receive after their emigration, and in consequence thereof?

If yea, state particularly all you know about such agreement, what were its terms, when and where made, and how was it consented to by the emigrants?

If there was no express written agreement, was there or not any understanding, and if so, what was it?

Were the terms, conditions and inducements made by the said Company generally known by the emigrants before their emigration, or on arriving in Texas, or when?

If so, what were the terms, conditions and inducements, and how were they proclaimed or made known?

Annex any written or private testimony in your possession relating to these subjects, as your answer.

ANSWER TO INTERROGATORY NO. 3.—Yes, I know something about the matter. I take statement from White's brief, page 4, which is correct:

"Whenever a party was willing to become an emigrant a contract was concluded with him and was signed and executed by the contracting parties in Germany, stipulating for the quantity of land he was to receive upon his arrival at the colony lands in Texas, and also the duties he was to perform as a colonist."

I add, as requested, one printed copy of the original contract. Before I started from Europe, in February, 1845, I objected to the form of the contracts, and I repeated my objections in my first reports from Texas. I told them that the contracts did not state the truth. That I could see no reason why to deviate from it, except perhaps the pride to appear in the eyes of the emigrants as donors in place of simple contractors only. That it may perhaps be a source of trouble afterwards, when it was necessary to prove to the government of Texas that a transfer of half the land allowed to each family or each single man by the Republic of Texas was really made to the Company, as it was their right to con-

tract for, and that the trouble of making new contracts in Texas could probably be avoided by making the first contracts in Germany in the right form, present them to the authorities in Texas, and claim a direct title from them for half the emigrant's land, as provided in the colonization contract with President Sam Houston. But aside from the form of the contract, there is not the least doubt but that the intention of the Company to give to each family only 320 acres and to each single man only 160 acres, and to keep the surplus for themselves, was fully understood by both parties. No family nor single man were accepted as emigrants of the Company, or shipped by them, unless they had signed that original contract, of which I have annexed a copy, and the agent of the Company, either at the shipping places or at headquarters in Germany, signed invariably the same contract with the emigrants. These contracts, signed by both parties, were kept on file in Germany, I believe. The consent of the emigrant is manifested by his signature under the contract. The terms, conditions and inducements were broadly and fully proclaimed and explained in all the printed pamphlets and advertisements of the Company, and in the public newspapers in Germany. They were well known to the emigrants before they emigrated, and on arriving in Texas. Under an act of the Legislature dated March 20, 1848, Wm. F. Evans was appointed first Commissioner of the German Colonies, and he issued the first land certificates June 6, 1848, for the full quantity of land which the Republic of Texas had allowed for each family or single man. In the same way the Commissioner for Peters Colony had issued headrights for the emigrants, and the eminent jurist, Judge Paschal, the deceased husband and father of the plaintiffs in this case, has fought out from the Legislature an indemnification of 1700 sections of land for the contractors of Peters

Colony. Since 1847, I had nothing more to do with the German Emigration Company. Already, at the end of 1845, when I saw the mismanagement of the leading director in Europe, I tendered my resignation, which neither then, nor at several repetitions in 1846, was accepted. Early in 1847, at my return from the treaty grounds with the Comanches, I turned over my office to the first man whom I found willing to take it, and who had a kind of preliminary authority to accept it. I can therefore speak only from hearsay as to events which happened later. I believe that the agents of the Company have tried to get formal transfers from the emigrants for half of their land in behalf of the Company, with what success I do not know. So far as these transfers were willingly made by the emigrants, I believe that they will hold good, and be considered as equitable and binding.

As to the considerations and inducements held out to the emigrants in exchange for the transfer of half their lands, and the conditions and obligations agreed to in their contracts, the Company promised to them:

1. To make the rivers navigable.
2. To canalize them, if necessary.
3. To see that steamboat lines were established.
4. To establish and build good roads and bridges.
5. To build churches.
6. To establish saving banks.
7. To establish one or more free schools.
8. To build hospitals, infirmaries, orphan asylums and establish drug stores.
9. To furnish to each settlement a grist mill, a saw mill, and a cotton gin.
10. To advance the surveying fees on all colonists lands.
11. To deliver a house to each emigrant in the colony on his land for \$24 (which could not have been made for less than \$100).

12. To transport them from the place of disembarkation at Galveston by sea to Matagorda Bay, by land (with baggage unlimited), the expedition of 1844 for \$4 per head, the expedition of 1845 for \$8 per head, the expedition of 1846 for \$11.20 per head, till upon their land in the colony (which transportation could not be done for less than \$20 to \$30).

13. To keep them in provisions and deliver them goods, implements, farming utensils, and material, working animals, horses, oxen, cows, and other stock, all on a credit for two successive years or crops.

The Company introduced:

1844,	700	emigrants.	(Page 79, Tex. hd. bk., 1846.)
1845,	4304	"	(Ship list.)
1846,	2376	"	" "
Total, 7380			

Counting an army of 5,000 emigrants (1844-5) to be kept in provisions and goods from the end of October, 1845, till March, 1846, at the very lowest estimate of 10 cents per day and person, it did require a daily expense of \$500. The estimate of 10 cents per day and person is so low that even half the number of emigrants could not be entertained for the amount mentioned. In fact, at the time when they were encamped half at Galveston and half at Indianola, the expense did sometimes run up to \$1000 a day. If it be said that the number diminished from March on by sickness, death, or dispersion, it was refilled by the new emigrants of 1846, and the rough guess or estimate of a daily expense of \$500 for the named items stands all the year of 1846, undisputed.

INTERROGATORY No. 4.—Did you or not ever hear any of the emigrants introduced into Texas by the said Company state, after their introduction, how much land they were to receive for a family, and how much for a single man, and how much was to be left for the company?

If yea, state what they said, what were their names, when were these statements made, and in whose presence?

ANSWER TO INTERROGATORY No. 4.—I cannot particularly recollect whether any emigrant or emigrants expressly stated, after introduction into Texas, how much land they were to receive for a family, or for a single man. There was no opportunity to mention or to argue that point. Everybody understood and knew well that a family had to claim in the colony 320 acres only, and a single man 160 acres. Whether any alteration in the minds of some or all emigrants had taken place since they found out that they got their lands not as a donation from the Company, but as a consequence of contract, I have had no opportunity to test.

INTERROGATORY No. 5.—Were the terms, conditions and inducements on which said emigrants came to Texas generally known and understood among the emigrants and other persons familiar with Fisher and Miller's colony to be equitable and binding?

ANSWER TO INTERROGATORY No. 5.—I believe that the terms, conditions and inducements on which the emigrants came to Texas, were generally known and understood to be equitable and binding.

INTERROGATORY No. 6.—Were or were not the transfers of land or land certificates by the emigrants to said Company of lands in said colony made in pursuance of an agreement between said emigrants and said Company at the time of the introduction of said emigrants?

What generally was the consideration for which the said emigrants transferred an interest in their colony lands or land certificates (if in fact any of them did so transfer) to said Company?

ANSWER TO INTERROGATORY No. 6.—If any transfer of land or land certificates was made to the

Company, by the emigrants of said Company, it was made in good faith and in consequence and fulfillment of the original agreement between emigrant and Company at or before their introduction. The form of that original agreement may have been wrong, but the intent and meaning was perfectly clear. The consideration for which the emigrants had to transfer half of their colony lands or land certificates was the trouble and expense the Company had incurred, the promises which they had held out, a great many of which had been fulfilled with a heavy loss of money and no gain whatever, and the right of the Company to stipulate for a transfer of half the land or non-acceptance of the colonist.

Sworn to and subscribed.

ABBREVIATIONS.

1. Coll. Doc., 1845.—Collected Documents of the Association for Protection of German Emigrants. Mainz, 1845.

2. Hd. bk., 1845.—Texas: A Hand-book for German Emigrants of the Association, etc. Bremen, 1845.

3. Hd. bk., 1846.—Same, second edition. Bremen, 1846.

4. The German Settlement in Texas. Bonn, 1845.

5. White.—John P. White, printed brief for appellees in Supreme Court of Texas, Austin term, 1870–1871, printed in Seguin, Texas.

6. Roemer's Texas.—Dr. F. Roemer's Texas, with special reference to German Emigration. Bonn, 1849.

7. Roemer, Dr. F.—The Cretaceous Formation of Texas. Bonn, 1852.

ERRATA.

Page 5, line 16:	<i>for</i> Texas	should be	<i>to</i> Texas.
" 8, "	13: <i>had</i>	" "	<i>held.</i>
" 13, "	2: <i>naivete</i>	" "	<i>naivety.</i>
" 19, "	12: <i>employees</i>	" "	<i>employees.</i>
" 20, "	25: <i>addressed in</i>	" "	<i>addressed to.</i>
" 20, "	26: <i>published to</i>	" "	<i>published in.</i>
" 30, "	7: <i>that</i>	" "	<i>than.</i>

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